

F1QSMITP

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

13 CR 633 (PAE)

6 MATTHEW MITROW,

7 Defendant.  
-----x

8 New York, N.Y.  
9 January 26, 2015  
10 11:45 a.m.

12 Before:

13 HON. PAUL A. ENGELMAYER,

14 APPEARANCES  
15 District Judge

16 PREET BHARARA

17 United States Attorney for the  
18 Southern District of New York

19 STANLEY J. OKULA

20 Assistant United States Attorney

21 MOSKOWITZ & BOOK, LLP

22 Attorneys for Defendant

23 BY: AVI MOSKOWITZ

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1 (Case called)

2 THE COURT: Good morning. Before proceeding here, I  
3 note that there is to be a superseding information which the  
4 defendant is to plead to. Do we have a waiver of indictment  
5 form?

6 MR. OKULA: We do. I have two executed waiver forms  
7 both of which were signed by the defendant and defense counsel.  
8 I am handing them up to your Honor's law clerk right now.

9 THE COURT: Thank you. I understand we have a  
10 photocopy of the original signed plea agreement, but which you  
11 have originally, in effect, resigned and reinitialed today,  
12 that because the original is in snowbound DC?

13 MR. OKULA: That is correct, your Honor. If I could  
14 just specify, the original plea agreement was signed in  
15 counterpart due to the geographical difference of the parties,  
16 but the one that has the two counterpart original signatures is  
17 with Mr. Young in Washington, DC. What I suggested to  
18 Mr. Moskowitz and the defendant and we all agreed to do was  
19 essentially we took the copy, which we had previously provided  
20 through Mr. Young to the court last week, and initialed simply  
21 the signatures that were previously affixed to it as  
22 essentially making it a new original document. I would be happy  
23 to hand it up, if your Honor wants.

24 THE COURT: Why don't you do that. That would be  
25 great. That's a good approach.

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1                   MR. OKULA: Your Honor, may I note just one more thing  
2 before we get started? Just in scanning the elements document  
3 that was submitted to the court, I saw that there was omitted  
4 from the statutory elements one that is included in the plea  
5 agreement, that is the cost of prosecution mandatory component  
6 of a Title 26 plea; here, the subscribing to false return. It  
7 is more theoretical than real here in a plea case, but  
8 nevertheless, it has to be listed as one of elements.

9                   THE COURT: Not an element, but a penalty.

10                  MR. OKULA: A penalty. I apologize. Yes, a penalty.

11                  THE COURT: Thank you. I appreciate you doing that.

12                  I am going to mark as Government Exhibit 1 the plea  
13 agreement bearing at least the original initials of the  
14 parties. I will turn to it when we get to that point in the  
15 plea proceedings. Thank you, everyone.

16                  Again, before I get started with the substance, thanks  
17 to everyone for accommodating my chambers request to move this  
18 earlier. It is for good reason.

19                  Mr. Moskowitz, I have been informed that your client  
20 wishes to plead guilty to Count One of a superseding  
21 information as (S1) 13 CR 633 in this case, is that correct.

22                  MR. MOSKOWITZ: That's correct, your Honor.

23                  THE COURT: Mr. Mitrow, is that correct that you  
24 intend to plea guilty to that count?

25                  THE DEFENDANT: That's correct, your Honor.

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1                   THE COURT: Very good.

2                   Before accepting your guilty plea, I am going to ask  
3 you certain questions so that I can establish to my  
4 satisfaction that you wish to plead guilty because you are  
5 guilty and not for some other reason. If you don't understand  
6 any of my questions or you would like further opportunity to  
7 consult with your attorney, will you please let me know?

8                   THE DEFENDANT: Yes, your Honor.

9                   THE COURT: Are you able to speak and understand  
10 English?

11                  THE DEFENDANT: Yes, your Honor.

12                  THE COURT: I am to now going to place you under oath.  
13 Please rise for this purpose.

14                  (Defendant sworn)

15                  THE COURT: Do you understand, Mr. Mitrow, that you  
16 are now under oath and that if you answer any of my questions  
17 falsely, your answers to my questions may be used against you  
18 in another prosecution for perjury?

19                  THE DEFENDANT: Yes, your Honor.

20                  THE COURT: What is your full name?

21                  THE DEFENDANT: Matthew John Mitrow.

22                  THE COURT: How old are you?

23                  THE DEFENDANT: 42.

24                  THE COURT: How far did you go in school?

25                  THE DEFENDANT: Up until the 11th grade.

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1 THE COURT: Where was that?

2 THE DEFENDANT: That was in Scotch Plains, New Jersey.

3 THE COURT: Have you ever been treated or hospitalized  
4 for any mental illness?

5 THE DEFENDANT: No, your Honor.

6 THE COURT: Are you now or are have you recently been  
7 under the care of a doctor or a hospital or a psychiatrist?

8 THE DEFENDANT: Yes, your Honor.

9 THE COURT: Tell me about that.

10 THE DEFENDANT: Psychiatrist.

11 THE COURT: When have you been under a psychiatrist's  
12 care?

13 THE DEFENDANT: Since I was diagnosed with ADD and  
14 dyslexia since I was 18 years old for mostly management of  
15 medication.

16 THE COURT: Has that been roughly continuous treatment  
17 since age 18?

18 THE DEFENDANT: It was.

19 THE COURT: Are there any other medications you're on  
20 for ADD?

21 THE DEFENDANT: One medication.

22 THE COURT: What is that?

23 THE DEFENDANT: It is Wellbutrin XL, 300 milligrams.

24 THE COURT: When did you last take that?

25 THE DEFENDANT: This morning.

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1                   THE COURT: What effect does it have on you?

2                   THE DEFENDANT: It helps me pay attention and read a  
3 little bit better.

4                   THE COURT: All of which is a good thing for these  
5 proceedings.

6                   THE DEFENDANT: Indeed.

7                   THE COURT: Does it have any negative effect on you?

8                   THE DEFENDANT: None whatsoever, your Honor.

9                   THE COURT: Does it affect in any way your ability to  
10 speak clearly?

11                  THE DEFENDANT: No.

12                  THE COURT: Does it affect in any way hurt your  
13 ability to comprehensively -- it sounds like it does  
14 positively -- does it in any way hurt your ability to  
15 understand what is going on here?

16                  THE DEFENDANT: No, your Honor.

17                  THE COURT: Putting aside the Wellbutrin and the care  
18 of the psychiatrist, have you ever been hospitalized or treated  
19 for addiction to any drugs or alcohol?

20                  THE DEFENDANT: No, your Honor.

21                  THE COURT: Again, putting aside those things, have  
22 you in the past 24 hours taken any drugs, medicine, or pills,  
23 or drunk any alcoholic beverages?

24                  THE DEFENDANT: No, your Honor.

25                  THE COURT: Is your mind clear today?

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1                   THE DEFENDANT: Yes, it is, your Honor.

2                   THE COURT: Do you understand what is happening in  
3 this proceeding?

4                   THE DEFENDANT: Yes, I do, your Honor.

5                   THE COURT: Mr. Moskowitz, do you have any doubt about  
6 your client's competency to plead at this time?

7                   MR. MOSKOWITZ: No, your Honor.

8                   THE COURT: How about you, Mr. Okula?

9                   MR. OKULA: No, your Honor.

10                  THE COURT: Based on Mr. Mitrow's response to my  
11 questions and his demeanor as he appears before me, I find that  
12 he is competent to enter a plea of guilty at this time. His  
13 answers have been extremely responsive and clear, and I note  
14 that counsel share that sentiment.

15                  Have you had a sufficient opportunity to discuss your  
16 case with your attorney?

17                  THE DEFENDANT: Yes, your Honor.

18                  THE COURT: Have you had a sufficient opportunity to  
19 discuss the charge to which you intend to plead guilty, any  
20 possible defenses to that charge, and the consequences of  
21 entering a plea of guilty?

22                  THE DEFENDANT: Yes, your Honor.

23                  THE COURT: Are you satisfied with your attorney's  
24 representation of you, including your attorney's representation  
25 in connection with reaching a plea?

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1                   THE DEFENDANT: Yes, your Honor.

2                   THE COURT: I am now going to explain certain  
3 constitutional rights you have. You will be giving up these  
4 rights if you enter a plea of guilty. Under the Constitution  
5 and laws of the United States, you are entitled a speedy and a  
6 public trial by a jury on the charges contained in the  
7 information. Do you understand that?

8                   THE DEFENDANT: Yes, your Honor.

9                   THE COURT: At that trial, you would be presumed to be  
10 innocent and the government would be required to prove you  
11 guilty by competent evidence and beyond a reasonable doubt  
12 before you could be found guilty, you would not have to prove  
13 that you were innocent, and a jury of 12 people would have to  
14 agree unanimously that you were guilty. Do you understand  
15 that?

16                  THE DEFENDANT: Yes, your Honor.

17                  THE COURT: At that trial, and at every stage of your  
18 case, you would be entitled to be represented by an attorney,  
19 and if you could not afford one, one would be appointed to  
20 represent you free of charge. Do you understand?

21                  THE DEFENDANT: Yes, your Honor.

22                  THE COURT: During the trial, the witnesses for the  
23 government would have to come to court and testify in your  
24 presence and your lawyer could cross-examine the witnesses for  
25 the government, object to evidence offered by the government,

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1 and if you desire, issue subpoenas, offer evidence, and compel  
2 witnesses to testify on your behalf. Do you understand that?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: At a trial, although you would have the  
5 right to testify if you chose to do so, you would also have the  
6 right not to testify, and no inference or suggestion of guilty  
7 could be drawn from the fact that you did not testify, if that  
8 was what you chose to do. Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: At trial, the government would have to  
11 prove each and every part or element of the charge beyond a  
12 reasonable doubt for you to be convicted of that charge. Do  
13 you understand that?

14 THE DEFENDANT: Yes, your Honor.

15 THE COURT: Do you understand that if you were  
16 convicted at a trial, you would have the right to appeal  
17 that verdict?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: Even at this time, right now, even as you  
20 are in the process of entering this guilty plea, you have the  
21 right to change your mind, plead not guilty, and go to trial.  
22 Do you understand that?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: If you plead guilty and I accept your  
25 plea, you will give up your right to a trial and the other

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1 rights that I have just described. There will be no trial and  
2 I will enter a judgment of guilty and sentence you on the basis  
3 of your guilty plea. After considering the submissions  
4 relating to sentencing that I receive from you and your lawyer,  
5 from the government, as well as a presentence report prepared  
6 by the probation department. Do you understand that?

7 THE DEFENDANT: Yes, your Honor.

8 THE COURT: If you plead guilty, you will also give up  
9 your right not to incriminate yourself, because I will ask you  
10 questions about what you did in order to satisfy myself that  
11 you are guilty as charged. Do you understand that?

12 THE DEFENDANT: Yes, your Honor.

13 THE COURT: Now, the document which contains the  
14 charge to which you have indicated you wish to plead guilty is  
15 called an information. It has been issued by the United States  
16 Attorney. It is a serious crime and you have a constitutional  
17 right to require the government to present evidence to a grand  
18 jury which may or may not vote to charge you with this crime.  
19 Do you understand what a grand jury is?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: If the grand jury did vote to charge you  
22 with this crime, the charge would be contained in a document  
23 called an indictment rather than an information and an  
24 indictment would be signed by the United States Attorney and  
25 the grand jury foreperson. Do you understand that?

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1                   THE DEFENDANT: Yes, your Honor.

2                   THE COURT: Do you wish to give up your right to be  
3 charged by a grand jury?

4                   THE DEFENDANT: Yes, your Honor.

5                   THE COURT: Counsel have handed up two copies of a  
6 waiver of indictment form. Mr. Moskowitz, is this your  
7 signature on the form dated today?

8                   MR. MOSKOWITZ: Yes, your Honor.

9                   THE COURT: Mr. Mitrow, is it your signature on the  
10 form?

11                  THE DEFENDANT: Yes, your Honor.

12                  THE COURT: When you signed this form, did you  
13 understand that you were acknowledging your willingness to give  
14 up your right to be indicted by a grand jury?

15                  THE DEFENDANT: Yes, your Honor.

16                  THE COURT: I find a knowing and voluntary waiver of  
17 Mr. Mitrow's right to be indicted by a grand jury. I will ask  
18 my law clerk to sign this, alongside Mr. Moskowitz' signature,  
19 just to be our witness. Thank you.

20                  Mr. Mitrow, have you received a copy of the  
21 information containing the charge against you?

22                  THE DEFENDANT: Yes, your Honor.

23                  THE COURT: Have you read it?

24                  THE DEFENDANT: I have, yes.

25                  THE COURT: Have you discussed it with your attorney?

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1                   THE DEFENDANT: Yes, I have, your Honor.

2                   THE COURT: Do you understand that you are charged in  
3 Count One with filing a false tax return in violation of  
4 26 U.S.C. 72061?

5                   THE DEFENDANT: Yes, your Honor.

6                   THE COURT: Do you understand that the maximum  
7 possible penalty for this crime is three years imprisonment?

8                   THE DEFENDANT: Yes, your Honor.

9                   THE COURT: Do you understand that the maximum fine  
10 for this crime is the greatest of \$250,000, twice the gross  
11 pecuniary gain derived from the offense, or twice the gross  
12 pecuniary loss to people other than you resulting from the  
13 offense?

14                  THE DEFENDANT: Yes, your Honor.

15                  THE COURT: If you plead guilty to this crime, you may  
16 receive a term of one year supervised release. Do you  
17 understand that?

18                  THE DEFENDANT: Yes, your Honor.

19                  THE COURT: Supervised release means that you will be  
20 subject to monitoring when you're released from prison. There  
21 are terms of supervised release with which you must comply. If  
22 you don't comply with them, you can be returned to prison  
23 without a jury trial for all or part of the term of supervised  
24 release imposed by the court. Under those circumstances, you  
25 would not be given any credit towards that term for the time

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1 you served in prison or as a result of your sentence for this  
2 crime, nor will you necessarily be given any credit towards  
3 that term for any time you had spent on post-release  
4 supervision. Do you understand that?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: For pleading guilty to this crime, you  
7 will be required to pay a mandatory \$100 special assessment.  
8 Do you understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: For pleading guilty to this crime, you may  
11 be required to pay restitution to any person or persons injured  
12 as a result of your criminal conduct. Do you understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: For pleading guilty to this crime, you may  
15 be compelled to forfeit any and all property constituting and  
16 derived from proceeds obtained from your criminal conduct. Do  
17 you understand that?

18 THE DEFENDANT: Yes, your Honor.

19 THE COURT: As Mr. Okula pointed out, you may also be  
20 assigned to pay the costs of the prosecution. Do you  
21 understand that?

22 THE DEFENDANT: Yes, your Honor.

23 THE COURT: Do you also understand that if I accept  
24 your guilty plea and adjudge you guilty, that may be deprive  
25 you of valuable civil rights, such as the right to vote, the

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1 right to hold public office, the right to serve on a jury, and  
2 the right to possess any kind of firearm?

3 THE DEFENDANT: Yes, your Honor.

4 THE COURT: Are you a United States citizen?

5 THE DEFENDANT: Yes, I am.

6 THE COURT: Under current law, there are sentencing  
7 guidelines as well as other factors set forth in the sentencing  
8 statutes that a judge must consider in determining a sentence.  
9 Do you understand that?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Have you spoken with your attorney about  
12 the sentencing guidelines and those other factors?

13 THE DEFENDANT: I have, your Honor.

14 THE COURT: Do you understand that the court will not  
15 be able to determine what the guideline range is that will form  
16 a part of my determination of what a reasonable sentence would  
17 be in your case until after a presentence report has been  
18 prepared and until after you and your attorney and the  
19 government's attorney have all had the chance to challenge any  
20 of the facts reported in that report by the probation officer?

21 THE DEFENDANT: Yes, your Honor.

22 THE COURT: Do you understand that even though the  
23 government has provided you with its current calculation of  
24 your sentence under the sentencing guidelines, the plea  
25 agreement, and even though the defense has stipulated to that

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1 calculation, that range of between 10 and 16 months  
2 imprisonment is not binding on the probation department and is  
3 not binding on the court?

4 THE DEFENDANT: Yes, your Honor.

5 THE COURT: Do you understand that even after I have  
6 determined what guideline range applies to your case, I have  
7 the discretion under the current law to impose a sentence that  
8 is higher or lower than the one suggested by the sentencing  
9 guidelines?

10 THE DEFENDANT: Yes, your Honor.

11 THE COURT: Do you understand that if your attorney or  
12 anyone else has attempted to predict what your sentence will  
13 be, their prediction could be wrong. No one, not your  
14 attorney, not the government's attorney, no one can give you  
15 any assurance of what your sentence will be, because I am going  
16 to decide your sentence and I am not going to do that now and I  
17 really cannot do that now. Instead, I am going to wait until I  
18 receive the presentence report prepared by the probation  
19 department, I am going to wait until I receive the party's  
20 sentencing submissions, I am going to review and study all of  
21 those materials carefully, I am going to do my own independent  
22 calculation how the sentencing guidelines apply to your case,  
23 but most of all, I am going to determine what a reasonable  
24 sentence is to you based on all of the factors that are set  
25 forth in the sentencing statute, which is known as Section

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1 3553(a). Do you understand all of that?

2 THE DEFENDANT: Yes, I do, your Honor.

3 THE COURT: Have you discussed these issues and the  
4 overall sentencing process with your attorney?

5 THE DEFENDANT: I have, your Honor.

6 THE COURT: Even if your sentence is different from  
7 what you expect, even if it is different from what your  
8 attorney or anyone else has told you it might be, even if it is  
9 different from the guideline range that appears in your plea  
10 agreement, you would still be bound by your guilty plea and you  
11 would not be allowed to withdraw your plea of guilty. Do you  
12 understand that?

13 THE DEFENDANT: Yes, your Honor.

14 THE COURT: Has anyone threatened you or anyone else  
15 forced you in any way to plead guilty?

16 THE DEFENDANT: No, your Honor.

17 THE COURT: Counsel has handed up the plea agreement  
18 in this case marked as Government Exhibit 1. I note on the  
19 back the photocopied signatures of Richard Tarlowe, the Chief  
20 of Complex Frauds Crime Unit, and it must be Andrew Young,  
21 Special Assistant United States attorney. Are those the  
22 signatures, Mr. Okula, of those people?

23 MR. OKULA: Yes, your Honor.

24 THE COURT: I notice as well that there are initials  
25 that appear next to those names. In nonphotocopied real ink,

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1 are those your initials?

2 MR. OKULA: They are indeed. Based on my  
3 understanding and my involvement in supervision of this matter  
4 and my involvement in the approval of the plea agreement, so I  
5 had preexisting knowledge that those signatures had been  
6 affixed, your Honor.

7 THE COURT: Very good.

8 Mr. Moskowitz, I see your photocopied signature from  
9 January 14 and your initials which I take it were placed on  
10 this today. Is that, in fact, your signature and are those, in  
11 fact, your initials?

12 MR. MOSKOWITZ: Yes, your Honor.

13 THE COURT: Mr. Mitrow, same question to you, I see  
14 here your photocopied signature from January 13 and your  
15 initials. Are those, in fact, your signature and your  
16 initials, the latter put on today?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Very good. Did you read this agreement  
19 before you signed it, Mr. Mitrow?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Did you discuss it with your attorney  
22 before you signed it?

23 THE DEFENDANT: Yes, your Honor.

24 THE COURT: Did you believe that you understood the  
25 agreement at the time that you signed it?

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1                   THE DEFENDANT: Yes, your Honor.

2                   THE COURT: Did you willingly sign this agreement?

3                   THE DEFENDANT: I did, your Honor.

4                   THE COURT: Did anyone force you to sign it?

5                   THE DEFENDANT: No, your Honor.

6                   THE COURT: Are there any agreements between the  
7 parties apart from those that are set out in this agreement?

8                   THE DEFENDANT: No, your Honor.

9                   THE COURT: Government counsel, would you kindly  
10 please summarize the terms of the plea agreement?

11                  MR. OKULA: Yes, your Honor. The points of the plea  
12 agreement are as follows:

13                  First, the defendant is agreeing to waive indictment  
14 and is agreeing to the filing by the United States Attorney of  
15 the superseding information that contains a single count  
16 charging him with subscribing to a false tax return for the  
17 2008 tax year. In exchange, your Honor, the government is  
18 agreeing that the defendant will not be further charged based  
19 on the conduct that is set out in the third superseding  
20 indictment. By implication, the government is going to move to  
21 dismiss the underlying charge at the time of sentencing.

22                  There is also a series of additional agreements.

23                  THE COURT: I think that it is more than an  
24 implication.

25                  MR. OKULA: Explicitly, your Honor.

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1                   THE COURT: The government will move to dismiss any  
2 open counts.

3                   MR. OKULA: Yes, your Honor.

4                   The defendant is agreeing to pay restitution based on  
5 the tax loss that is currently calculated in the amount of  
6 \$30,822. There is an agreement, a stipulated guideline range  
7 of level 12 and an attendant incarceration range of 10 to  
8 16 months. The parties are stipulating that that is the  
9 applicable guidelines range.

10                  The government is agreeing that it will not appeal any  
11 sentence that the court may impose that is within or above that  
12 stipulated range, and defendant is agreeing that he will not  
13 appeal any sentence that is within or below the stipulated  
14 guideline range.

15                  The parties are agreeing that no departure, as  
16 formally understood under the guidelines from the stipulated  
17 range, is appropriate. Nevertheless, both parties remain  
18 unfettered to argue to the court the 3553(a) factors about  
19 where within the statutory maximum the court should impose a  
20 sentence.

21                  There is one additional important provision, your  
22 Honor; that is, there is a waiver of venue provision in the  
23 agreement based on the tax charge that is contained in the  
24 superseding information.

25                  Those are the salient points of the agreement, your

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1 Honor.

2 THE COURT: Very good. Thank you. Very helpful.

3 Mr. Moskowitz, are you in agreement with the  
4 government's summary of the salient terms?

5 THE DEFENDANT: Yes, your Honor.

6 THE COURT: Mr. Mitrow, did you hear and understand  
7 Mr. Okula's summary of those terms?

8 THE DEFENDANT: I do, your Honor.

9 THE COURT: I am not going to review all of them. I  
10 have to highlight several of the terms of the agreement. As  
11 Mr. Okula stated, the parties have stipulated that the  
12 guidelines here call for a term of imprisonment between 10 and  
13 16 months. Again, do you understand that that stipulation  
14 binds the government and it binds you, but it doesn't bind me,  
15 because I have to make my own independent calculation on how  
16 the guidelines apply?

17 THE DEFENDANT: Yes, your Honor.

18 THE COURT: Do you also understand under this  
19 agreement that you are giving up your right to ask within the  
20 limited guidelines framework that I depart below the guideline  
21 range that is calculated here, even though you're not giving up  
22 your right to ask that I sentence you below that range based on  
23 the broader set of factors that I can consider under  
24 Section 3553(a)?

25 THE DEFENDANT: Yes, your Honor.

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1                   THE COURT: Do you understand that as part of the plea  
2 agreement, you have agreed to make restitution in the amount of  
3 \$30,822 to the IRS?

4                   THE DEFENDANT: Yes, your Honor.

5                   THE COURT: Do you also understand that under the  
6 agreement, you have agreed to file accurate and personal tax  
7 returns for the calendar years 2008 and 2009 and to do so two  
8 weeks before the date of sentencing?

9                   THE DEFENDANT: Yes, your Honor.

10                  THE COURT: Do you understand as well under this  
11 agreement that you have waived any change you might have to  
12 venue in this district?

13                  THE DEFENDANT: Yes, your Honor.

14                  THE COURT: Finally, do you understand that under the  
15 agreement, you are giving up your right to appeal or otherwise  
16 challenge your sentence so long as I don't sentence you to more  
17 than 16 months imprisonment?

18                  THE DEFENDANT: Yes, your Honor.

19                  THE COURT: Has anyone made any promise or done  
20 anything other than what is contained in the plea agreement to  
21 induce you to plead guilty?

22                  THE DEFENDANT: No, your Honor.

23                  THE COURT: Has anyone made a promise to you as to  
24 what your sentence will be?

25                  THE DEFENDANT: No, your Honor.

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1                   THE COURT: You understand that the agreement doesn't  
2 bind any federal, state, or local prosecuting agency, other  
3 than the United States Attorney for this district, and with  
4 respect to tax offenses, the Tax Division of the Department of  
5 Justice?

6                   THE DEFENDANT: Yes, your Honor.

7                   THE COURT: Do you still wish to plead guilty pursuant  
8 to this agreement?

9                   THE DEFENDANT: I do, your Honor.

10                  THE COURT: Having covered all that, Mr. Mitrow, I  
11 would like you now to tell me in your own words what you did  
12 that makes you believe you're guilty of the charge in the  
13 information.

14                  THE DEFENDANT: In 2009, I filed a false tax return by  
15 excluding approximately \$90,000 in income.

16                  THE COURT: Did the return contain a written  
17 declaration, that is, being made under penalty of perjury?

18                  THE DEFENDANT: Yes, your Honor.

19                  THE COURT: Did you know at the time that you  
20 subscribed to and filed that tax return that it was not true  
21 and correct as to a material matter, specifically as to your  
22 income?

23                  THE DEFENDANT: Yes, your Honor.

24                  THE COURT: Did you know at the time that what you  
25 were doing was wrong?

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1                   THE DEFENDANT: Yes, your Honor.

2                   THE COURT: Did you know that you were committing a  
3 crime?

4                   THE DEFENDANT: Yes, your Honor.

5                   THE COURT: Are you pleading guilty voluntarily and of  
6 your own free will and because you are, in fact, guilty?

7                   THE DEFENDANT: Yes, your Honor.

8                   THE COURT: Does government counsel agree that there  
9 is a sufficient factual predicate for a guilty plea?

10                  MR. OKULA: We do, indeed, your Honor.

11                  THE COURT: Does defense counsel?

12                  MR. MOSKOWITZ: Yes, your Honor.

13                  THE COURT: Does defense counsel know of any valid  
14 defense that would prevail at trial or any reason why your  
15 client should not be permitted to plead guilty?

16                  MR. MOSKOWITZ: No, your Honor.

17                  THE COURT: Can government counsel represent, had the  
18 case gone to trial, it had sufficient evidence to establish a  
19 conviction?

20                  MR. OKULA: Yes, your Honor.

21                  THE COURT: Mr. Mitrow, you acknowledging that you  
22 are, in fact, guilty as charged in the information and because  
23 I am satisfied you know your rights, including your right to go  
24 to trial, because I am satisfied that you are aware of the  
25 consequences of your plea, including the sentence which may be

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1 imposed, because I find that you're voluntarily pleading  
2 guilty, I accept your guilty plea and enter a judgment of  
3 guilty to the one count of which you pled guilty. This is  
4 important.

5 The next step in your case involves the sentencing  
6 process. I have earlier referred to a few times to the  
7 presentence record. The probation department is going to want  
8 to interview you in connection with the presentence report that  
9 it will prepare. If you choose to speak with the probation  
10 department, please make sure anything you say is truthful and  
11 accurate. I read those reports carefully. They are often  
12 quite important to me in determining what sentence to impose.

13 You and your counsel have a right to examine the  
14 report and to comment on it at the time of sentencing. I urge  
15 you to read the report and discuss it with your attorney before  
16 sentencing. If there are any mistakes in it, please point them  
17 out to your lawyer so he can bring them to my attention before  
18 sentencing.

19 Will you agree to do that?

20 THE DEFENDANT: Yes, your Honor.

21 THE COURT: Mr. Moskowitz, I take it this is not a  
22 case in which your client is seeking an expedited sentence?

23 MR. MOSKOWITZ: That's correct, your Honor.

24 THE COURT: One moment.

25 Counsel, how is Thursday, June 4? Any problem with

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1 that day?

2 MR. OKULA: That is fine, your Honor.

3 MR. MOSKOWITZ: Fine, Judge.

4 THE COURT: How about June 4 at 11:00 a.m.?

5 MR. MOSKOWITZ: That's fine, Judge.

6 THE COURT: Defense submissions are due two weeks  
7 before sentencing. The government's submission is due one week  
8 before. On the Southern District website, you can find a  
9 reprint of my procedures for filing sentencing submissions with  
10 the clerk of the court, which are completely customary for the  
11 district.

12 Mr. Moskowitz, you must arrange for your client to be  
13 interviewed by the probation department within the next two  
14 weeks. Mr. Okula, the government must provide its case summary  
15 to the probation department also within the next two weeks.

16 MR. OKULA: Yes, your Honor.

17 THE COURT: I take it the defendant remains out on  
18 bail?

19 MR. OKULA: Yes, your Honor. We respectfully urge  
20 that those conditions or that liberty continue.

21 THE COURT: I am happy to do that. I do, though, need  
22 to give an admonition to Mr. Mitrow.

23 Mr. Mitrow, do you understand that all of the  
24 conditions on which you have been released until now continue  
25 to apply and that a violation of any of those conditions can

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1 have serious consequences for you at the time of sentence?

2 THE DEFENDANT: Yes, your Honor.

3 THE COURT: You must be in this courtroom for  
4 sentencing at the time and date set or you will be guilty of a  
5 separate crime called bail jumping and subject to a fine or  
6 prison term in addition to whatever sentence you may receive  
7 for the crime to which you have just pled guilty. Do you  
8 understand that?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: Thank you. Anything further from the  
11 government?

12 MR. OKULA: Nothing, except thank you again for  
13 allowing the substitution this morning, your Honor.

14 THE COURT: Of course. I thank you for being flexible  
15 at the change of schedule.

16 Anything from the defense?

17 MR. MOSKOWITZ: No, your Honor. Thank you.

18 THE COURT: Thank you. We stand adjourned.

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